## **Introduced by Senator Cannella**

February 14, 2011

An act to amend—Sections 399.11 and 399.12 of Section 399.12 of, and to repeal Section 399.12.5 of, the Public Utilities Code, relating to energy.

## LEGISLATIVE COUNSEL'S DIGEST

SB 297, as amended, Cannella. Renewable energy—resources: resources: hydroelectric generation.

Existing law establishes the California Renewables Portfolio Standard Program, which requires the Public Utilities Commission to implement annual procurement targets for the procurement of eligible renewable energy resources, as defined, for all retail sellers, as defined, to achieve the targets and goals of the program. The existing definition of an eligible renewable energy resource includes small hydroelectric generation facilities of 30 megawatts or less that meet specified criteria.

This bill would make technical and nonsubstantive changes to the program's legislative findings and declarations and definitions.

This bill would revise the definition of an eligible renewable energy resource to include a hydroelectric generation facility of any size, and remove other restrictions regarding which hydroelectric generation facilities meet the definition of an eligible renewable energy resource. The bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no-yes. State-mandated local program: no.

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The people of the State of California do enact as follows:

SECTION 1. Section 399.11 of the Public Utilities Code is amended to read:

- 399.11. The Legislature finds and declares all of the following:
- (a) In order to attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2010, and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, it is the intent of the Legislature that the commission and the Energy Commission implement the California Renewables Portfolio Standard Program described in this article.
- (b) Increasing California's reliance on eligible renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.
- (c) The development of eligible renewable energy resources and the delivery of the electricity generated by those resources to eustomers in California may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts and by reducing in-state fossil fuel consumption.
- (d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Resources Program administered by the Energy Commission and established pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.
- (e) New and modified electric transmission facilities may be necessary to facilitate the state achieving its renewables portfolio standard targets.

**SEC. 2.** 

- 32 SECTION 1. Section 399.12 of the Public Utilities Code is 33 amended to read:
  - 399.12. For purposes of this article, the following terms have the following meanings:
  - (a) "Conduit hydroelectric facility" means a facility for the generation of electricity that uses only the hydroelectric potential of an existing pipe, ditch, flume, siphon, tunnel, canal, or other

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manmade conduit that is operated to distribute water for a beneficial use.

- (b) "Delivered" and "delivery" have the same meaning as provided in subdivision (a) of Section 25741 of the Public Resources Code.
- (c) "Eligible—(1) Except as otherwise provided in paragraph (2) or (3), "eligible renewable energy resource" means an electrical generating facility that meets the definition of an "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following limitations:.
- (1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller or local publicly owned electric utility owned or procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.
- (B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.
- (2) A hydroelectric generation facility of any size, including a conduit hydroelectric facility, is an eligible renewable energy resource, if the facility meets the criteria in paragraph (2) of subdivision (b) of Section 25741.

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- (3) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable energy resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.
- (d) "Procure" means to acquire through ownership or contract. For purposes of meeting the renewables portfolio standard procurement requirements, a retail seller or local publicly owned electric utility may procure either delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. Nothing in

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this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

- (e) (1) "Renewable energy credit" means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.
- (2) "Renewable energy credit" includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.
- (3) Electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity used to generate electricity in the same process through which the facility converts renewable fuel to electricity, shall not result in the creation of a renewable energy credit. The Energy Commission shall set the de minimis quantity of nonrenewable fuels for each renewable energy technology at a level of no more than 2 percent of the total quantity of fuel used by the technology to generate electricity. The Energy Commission may adjust the de minimis quantity for an individual facility, up to a maximum of 5 percent, if it finds that all of the following conditions are met:
- (A) The facility demonstrates that the higher quantity of nonrenewable fuel will lead to an increase in generation from the eligible renewable energy facility that is significantly greater than generation from the nonrenewable fuel alone.
- (B) The facility demonstrates that the higher quantity of nonrenewable fuels will reduce the variability of its electrical output in a manner that results in net environmental benefits to the state.

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(C) The higher quantity of nonrenewable fuel is limited to either natural gas or hydrogen derived by reformation of a fossil fuel.

- (f) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.
- (g) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers located within the state, including any of the following:
  - (1) An electrical corporation, as defined in Section 218.
- (2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard program subject to the same terms and conditions applicable to an electrical corporation.
- (3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. This paragraph does not impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.
  - (4) "Retail seller" does not include any of the following:
- (A) A corporation or person employing cogeneration technology or producing electricity consistent with subdivision (b) of Section 218.
- 33 (B) The Department of Water Resources acting in its capacity 34 pursuant to Division 27 (commencing with Section 80000) of the 35 Water Code.
  - (C) A local publicly owned electric utility.
- 37 SEC. 2. Section 399.12.5 of the Public Utilities Code is 38 repealed.
- 39 399.12.5. (a) Notwithstanding subdivision (c) of Section 40 399.12, a small hydroelectric generation facility that satisfies the

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criteria for an eligible renewable energy resource pursuant to Section 399.12 shall not lose its eligibility if efficiency improvements undertaken after January 1, 2008, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. The entire generating capacity of the facility shall be eligible.

- (b) Notwithstanding subdivision (c) of Section 399.12, the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility, is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility, if all of the following conditions are met:
- (1) The incremental increase is the result of efficiency improvements from a retrofit that do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.
- (2) The hydroelectric generation facility meets one of the following certification mechanisms:
- (A) The hydroelectric generation facility has, within the immediately preceding 15 years, received certification from the State Water Resources Control Board pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Sec. 1341), or has received certification from a regional board to which the state board has delegated authority to issue certification, unless the facility is not subject to certification because there is no potential for discharge into waters of the United States.
- (B) If the hydroelectric facility is not located in California, the certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Sec. 1341) may be received from the applicable state board or agency or from a regional board to which the state board has delegated authority to issue the certification.
- (C) If the hydroelectric generation facility is the Rock Creek Powerhouse, Federal Energy Regulatory Commission Project Number 1962, the efficiency improvements have received any necessary incremental certification from the State Water Resources Control Board.
- 39 (3) The hydroelectric generation facility is owned by a retail 40 seller or a local publicly owned electric utility, was operational

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prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities, as determined by the Energy Commission, and the efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008.

- (4) All of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment by the retail seller or local publicly owned electric utility. For purposes of this paragraph, "long-term financial commitment" means either new ownership investment in the facility by the retail seller or local publicly owned electric utility or a new or renewed contract with a term of 10 or more years, which includes procurement of the incremental generation.
- (c) The incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility are not eligible for supplemental energy payments pursuant to the Renewable Energy Resources Program (Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code), or a successor program.
- (d) Notwithstanding subdivision (e) of Section 399.12 and subdivisions (a) and (b), a hydroelectric generation facility that is an eligible renewable energy resource pursuant to this article as of January 1, 2010, shall not lose its eligibility if the facility causes a change in the volume or timing of streamflow required by license conditions approved pursuant to the Federal Power Act (Chapter 12 (commencing with Section 791a) of Title 16 of the United States Code) on or after January 1, 2010.